IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1832 OF 2006

Shri Ambrish Singh Ganga Singh Thakur ...Petitioner

V/s.

The State of Maharashtra ...Respondent

Mr.Ajit Karwande for Petitioner.
Mr.Y.M. Nakhawa APP for the State.

CORAM : V.M. KANADE, J.

DATED : 12th SEPTEMBER, 2007.

P.C:-

1. Heard learned counsel for the Petitioner.

2. The Petitioner is challenging the order passed by the Court of Sessions in Criminal Revision Application No.333/2006 whereby the Sessions Court was pleased to dismiss the Revision Application which had challenged order of issuance of process which was passed by the Magistrate in a complaint filed by the original Complainant for the offences punishable U/s.447, 341 r/w 34 of IPC.

3. A complaint was filed by the Complainant alleging that the Petitioner herein had committed a criminal trespass. On the basis of said complaint, the

police recorded statement of witnesses and chargesheet was filed against the Petitioner in the Court of 32nd Court, Bandra, Mumbai on 3/1/2006. A Revision Application was preferred by the Petitioner in which it was alleged that the complaint was barred by virtue of provisions of Section 468 of Cr.P.C. It was submitted that the complaint was filed beyond the period of one year and therefore, no cognizance could have been taken by the Court. Sessions Court did not accept this submission which was made by the learned counsel on behalf of the Petitioner and it observed that the offence of criminal trespass was a continuing offence and even on the date when the complaint was filed, the accused was found on the disputed property and revision application was dismissed.

4. Learned counsel for the Petitioner invited my attention to the complaint which was filed. He pointed out that the Petitioner and the original complainant had entered into an agreement of sale in respect of said property and part of the consideration was paid. Petitioner had paid Rs.51000/ and balance consideration which was agreed to be paid was 17 lacs. Complainant stated that since the balance consideration was not paid, she had cancelled the agreement of sale and therefore, parties had approached the Civil Court and the Petitioner

had obtained ex-party order behind her back. It is submitted that later on said order was not vacated and said fact was mentioned in the complaint. It is submitted that, therefore, Petitioner had a legal right to make entry on the said land and it could not be said that he was a trespasser and even otherwise no case is made out. He submitted that offence punishable U/s.447 could not be said to be a continuing offence and, therefore, finding recorded by the Sessions Court was incorrect. He relied on the judgment in the case of **Saibaj V/s. Gaffoor reported in AIR 1932 Nagpur 112** in support of his submissions.

5. It is not possible to accept the submissions made by the learned counsel for the Petitioner. In the present case, the Petitioner had continued to remain in the property when admittedly, original Complainant was a lawful owner of the said property. In the complaint, it was alleged that though part of consideration was paid, since balance consideration was not paid, an agreement was cancelled and thereafter, the Petitioner had entered into the said property and posted his guards. In my view, Sessions Court was justified in coming to the conclusion that the offence of criminal trespass was a continuing offence, particularly, because the Petitioner had continued to remain on the property even

when the complaint was filed and as such provisions of Section 468 would not apply to the facts of the present case.

6. Further, ratio of the judgment on which reliance is placed by the learned counsel for the Petitioner would not apply to the facts of the present case. In the said case, the accused therein had taken forcible possession of the house of the complainant and after he filed complaint, accused was convicted. However, he did not give up possession of the said house and second complaint was filed. Sessions Court acquitted the accused on the ground that offence of criminal trespass had not been committed since after initial unlawful entry if the accused had remained possession, no further offence of criminal trespass was committed. This observation, obviously, has to be read in the context of facts and circumstances of that case. In the said case, accused was convicted on the first complaint which was filed. Ratio of the said judgment would not apply to the facts of the present case. There is no reason to interfere with the order passed by the Sessions Court. It is always open for the Petitioner to apply for discharge at the appropriate stage under the appropriate provisions of law. Hence, there is no reason to interfere with the impugned order while exercising writ jurisdiction under Article 227 of Constitution of India.

. Criminal Writ Petition is dismissed and disposed of accordingly.

V.M. KANADE, J.